



Paper No. 6

FREDERICK W. GIBB, III  
MCGINN & GIBB, PLLC  
2568-A RIVA ROAD  
SUITE 304  
ANNAPOLIS, MD 21401

**COPY MAILED****FEB 21 2002****OFFICE OF PETITIONS**

In re Application of  
Badura, et al.  
Application No. 09/943,841  
Filed: August 31, 2001  
Atty Docket No. YOR9-2001-0552-US1

DECISION ON PETITION

This is a decision on the "Petition Under 37 C.F.R. 1.17(h) and Response to Notice of Incomplete Nonprovisional Application and Request for Refund," filed January 17, 2002 (certificate of mailing November 2, 2001), which is properly considered as a petition under 37 C.F.R. §1.53(e)(2)<sup>1</sup> to accord the above-identified application a filing date of August 31, 2001 and to refund the petition fee.

Application papers in the above-identified application were filed on August 31, 2001. However, on October 5, 2001, the Initial Patent Examination Division (IPED) mailed a "Notice of Incomplete Nonprovisional Application," notifying applicant that the application papers had not been accorded a filing date because the application was deposited without drawings.<sup>2</sup>

In reply, applicants filed the instant petition. Applicants contend that the alleged omitted items were, in fact, filed in the U.S. Patent and Trademark Office with the filing of the original application on August 31, 2001. In support thereof, petitioner submitted *inter alia* a copy of their return postcard receipt listing "5" sheets of drawings, identifying this application by assignment of serial number 09/943,841, bearing a United States Patent and Trademark Office receipt date-stamp of August 31, 2001, and lacking any notation of non-receipt of any item listed.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503. Applicant has

---

<sup>1</sup> §1.53(e)(2) provides that "Any request for review of a notification pursuant to paragraph (e)(1) of this section, or a notification that the original application papers lack a portion of the specification or drawing(s), must be by way of a petition pursuant to this paragraph. ... In the absence of a timely (§1.181(f)) petition pursuant to this paragraph, the filing date of an application in which the applicant was notified of a filing error pursuant to paragraph (e)(1) of this section will be the date the filing error is corrected."

<sup>2</sup> See 35 U.S.C. 111(a)(4).

shown that the application as filed on August 31, 2001 included five sheets of informal drawings, and thus, is entitled to a filing date of August 31, 2001.

In view thereof, the petition is GRANTED.

Given the basis for granting the petition, no petition fee is required and none has been charged.

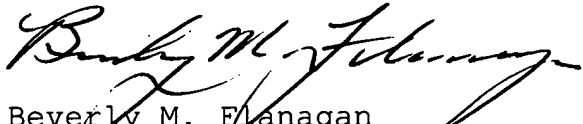
Receipt of the four (4) sheets of substitute formal drawings filed on January 17, 2002, is acknowledged.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for:

- further processing with a filing date of August 31, 2001, using the application papers received in the Office on that date and the five (5) sheets of informal drawings resubmitted on petition filed January 17, 2001.

Applicant will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

Telephone inquiries related to this decision should be directed to Petitions Attorney Nancy Johnson at 703-305-0309.



Beverly M. Flanagan  
Supervisory Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy